

## Chapter 26

### NUISANCES\*

Art.	I.	In General, §§ 26-1—26-20
Art.	II.	Weed Control, §§ 26-28—26-40
Art.	III.	Noise Control, §§ 26-41—26-60
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#### ARTICLE I. IN GENERAL

##### Sec. 26-1. Definitions.

The following words whenever used in this chapter shall have the meanings respectively set forth unless a different meaning is clearly required by the context:

**Building:** Any structure for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

**Noise:** Any sound which annoys or disturbs a reasonable person of normal sensitivities or which causes or tends to cause an adverse affect on humans, and as defined in Article III of this chapter pertaining to noise control.

**Nuisance:** The doing of any act or the omission to perform any duty, or the permitting of any condition or thing to exist that endangers life or health, obstructs or interferes with the reasonable or comfortable use of public or private property, tends to depreciate the value of the property of others, or in any way renders other persons insecure in the life or the use of property. Wherever the term nuisance is used in this chapter, it shall be deemed to mean a public nuisance.

**Odor:** Any smell from whatever source resulting from a quality of something that stimulates the olfactory organ and annoys or disturbs a reasonable person of normal sensitivities.

**Person:** Person shall include individuals, corporations, partnerships and all other legal entities which may hold title to real or personal property.

**Premises:** A tract of real property with a building or buildings thereon and shall include its grounds and other appurtenances.

**Property:** Both real property and personalty.

**Public nuisance:** A nuisance which is common to the public generally and which injures those citizens generally who may be so circumstanced as to come within its influence. A nuisance shall be deemed to be public if it is committed in such a place and in such a manner that the aggregation of private persons injured thereby is sufficiently great so as to constitute a public annoyance and inconvenience. (Code 1959, § 22.1-1; Ord. No. O-93-260, 9-28-93)

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\***Charter reference**—Power to abate nuisances, § 38(18).

**Cross references**—Health department, § 2-349 et seq.; air pollution, Ch. 4; erosion and sediment control, Ch. 16; dangerous fences, § 17-18 et seq.; garbage and refuse, Ch. 21; inoperative vehicles, § 21-61; sewers, Ch. 34; trees and vegetation, Ch. 38; water, Ch. 39.

**State law reference**—Power to prevent injury or annoyance from anything dangerous, offensive or unhealthy and to cause any nuisance to be abated, Code of Virginia, §§ 15.1-14, 15.1-867.

**Sec. 26-2. Illustrative enumeration.**

The existence of any of the following activities or conditions are hereby declared to be public nuisances, provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (a) Any violation of Article II of this chapter pertaining to weed control.
- (b) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things that causes a blighting problem or adversely affects the public health or safety.
- (c) Any condition which provides harborage for rats, mice, snakes and other vermin.
- (d) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- (e) All unnecessary or unauthorized noises and annoying vibrations, including animal noises that would constitute a violation of Article III of this chapter pertaining to noise control and which are reasonably likely to reoccur in the future.
- (f) All disagreeable or obnoxious odors and stench, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stench.
- (g) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (h) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (i) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (j) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (k) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- (l) Any action which unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage area, or that would constitute a violation of Chapter 27, Article I, of the City Code pertaining to loitering and which are reasonably likely to reoccur in the future. (Ord. No. O-93-260, 9-28-93)

**Sec. 26-3. Prohibited.**

- (a) It shall be unlawful for any person to create, cause, permit or maintain a public nuisance. It shall also be unlawful for any person to permit the continuation of a public nuisance after having been served a notice to abate such nuisance.
- (b) If the owner of a building or premises fails to abate or cause to be abated a public nuisance occurring on his property after receiving reasonable notice of its existence, even though such nuisance was caused or maintained by others, he shall be deemed to have permitted the continuation of such nuisance.
- (c) Violation of this section shall constitute a class 1 misdemeanor. In addition, each day a public nuisance shall continue after the date set by the city for its abatement shall constitute a separate offense. (Code 1959, §§ 22.1-2, 22.1-3; Ord. No. O-93-260, 9-28-93)

**Sec. 26-4. No tice to abate.**

Whenever a nuisance is found to exist within the city A duly designated officer of the city shall give written notice to the owner or occupant of the property upon which such nuisance exists and to the person

causing or maintaining the nuisance, if such person is known. (Code 1959, §§ 22-17, 22.1-4; Ord. No. O-93-260, 9-28-93)

**Sec. 26-5. Contents of notice.**

The notice to abate a nuisance issued under the provisions of this chapter shall contain:

- (a) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances.
- (b) The location of the nuisance, if the same is stationary.
- (c) A description of what constitutes the nuisance.
- (d) A statement of acts necessary to abate the nuisance and a date by which the nuisance shall be abated.
- (e) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city will abate such nuisance and assess the cost thereof against such person.
- (f) A statement that the failure to abate a nuisance constitutes a criminal offense punishable as a class 1 misdemeanor. (Code 1959, § 22-17; Ord. No. O-93-260, 9-28-93)

**Sec. 26-6. Service of notice.**

(a) The notice to abate a nuisance shall be given to the owner, the owner's agent, or person in control of the property on which the nuisance is located by delivering a copy of the notice to abate in person. If the person named in the notice to abate cannot be found after a diligent search, such notice shall be sent by registered or certified mail to the last known address of such person and a copy of the notice to abate shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

(b) The notice to abate a nuisance shall be given a corporation, bank, trust company or other corporate entity who is the owner of such property or who acts as the owner's agent by delivering a copy thereof to its president or such other officer, manager or director or agent thereof in the city; or if such person cannot be found at the regular office or place of business in the city of such corporation, bank, trust company, corporate entity, by delivering a copy to any employee thereof found at such office or place of business; or if no such person is found in such office or place of business, by leaving such copy posted at the front door of such office or place of business and a copy of the notice shall be posted on a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

(c) If the owner of property on which a nuisance is located is unknown or has no place of abode, office or place of business in the city, or after reasonable efforts the city cannot locate a last known address, notice shall be given by order of publication, by publishing a copy of the notice in a newspaper of general circulation in the city at least thirty (30) days prior to the abatement of the nuisance and a copy of the notice to abate shall also be posted in a conspicuous place on the premises. (Ord. No. O-93-260, 9-28-93)

**Sec. 26-6.1. Hearings.**

Upon request, a hearing shall be held before a designated officer of the City other than the officer who initially determined the existence of the nuisance. If, after hearing evidence, the hearing officer finds by a preponderance of the evidence that such a nuisance exists, shall order its abatement; otherwise, he shall dismiss the notice. A hearing must be requested in writing at least forty-eight (48) hours prior to the date given for the abatement of the nuisance. The hearing shall be an informal administrative proceeding rather than a judicial-type trial and while each party shall have the opportunity to present pertinent information and to question adverse witnesses the rules of evidence shall not apply. The decision of the designated officer is final and not subject to appeal. (Ord. No. O-93-260, 9-28-93)

**Sec. 26-7. Abatement by city.**

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter or who was so ordered by a hearing officer to abate the same, the city shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof. In order to abate a nuisance, the city may revoke any permit or license issued by the city to the owner of the offending property and which is required by law to conduct the business or activity which gives rise to the nuisance. If the nuisance is not subject to abatement by the city, or if otherwise appropriate, the designated officer shall cause criminal proceedings to be instituted against the person or persons causing or permitting the continuation of the nuisance.

When, in the opinion of the designated officer, a nuisance results in a condition that creates an immediate, serious and imminent threat to the health or safety of the public, the official may have the necessary work done to abate the nuisance whether or not notice to require the owner or occupant of the premises to abate the nuisance has been given. (Code 1959, § 22-17; Ord. No. O-93-260, 9-28-93)

**Sec. 26-8. City's costs declared lien.**

Any and all costs incurred by the city in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied. (Code 1959, § 22-17)

**Secs. 26-9—26-20. Re served.****ARTICLE II. WEED CONTROL**

**Editor's note**—Secs. 26-21—26-27.7. Repealed. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94 repealed previous Weed Control ordinance and was replaced by Sec. 26-28 through 26-28.8).

**Sec. 26-28. Authority for and purpose of article.**

This article is enacted pursuant to section 38(18) of the Lynchburg City Charter and section 15.1-11 of the Code of Virginia, in order to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morale of its inhabitants. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94)

**Sec. 26-28.1. Definitions.**

The following definitions shall apply to these words when used in this article:

(a) "Neglected property" shall include any property which contains weeds that violate the provisions of this article and whose owner/occupant has failed to cut the weeds after receiving notice from the city.

(b) "Owner" shall mean and include the owner or occupant of any parcel of real estate, including but not limited to any person in possession thereof having charge thereof as an executor, administrator, trustee, guardian or agent, and the beneficiary of any easement or right of use thereof.

(c) "Weeds" shall include any plant, grass or other vegetation (herbaceous or woody) over twelve (12) inches in height, excluding trees, ornamental shrubbery, vegetable and flower gardens purposefully planted and maintained by the property owner or occupant free of weed hazard or nuisance, cultivated crops, or undisturbed woodland not otherwise in violation. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94; Ord. No. O-95-235, 8-8-95)

**Sec. 26-28.2. Prohibited growth.**

It shall be unlawful for the owner or owners, occupant or occupants of any property, either vacant or developed, situated in the city to allow weeds to reach a stage of growth wherein it causes a public nuisance as defined in section 26-1 of this article.

Weeds shall be cut on properties zoned for agricultural or conservation purposes, used as farmland, or vacant city-owned property when such weeds are within fifty (50) feet of a residence. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94; Ord. No. O-95-235, 8-8-95)

**Sec. 26-28.3. Violation.**

Any owner or occupants coming under the provisions of this article who shall fail to cause such weeds, as defined in section 26-28.1, to be cut and/or removed from such property or premises within the time specified in the notice referred to in section 26-28.4 will be deemed to be in violation of this article. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94)

**Sec. 26-28.4. Notice to cut, remove.**

The owner or occupants of property situated in the city shall be, and are hereby, required to cut and/or remove all weeds as defined in section 26-28.1. It shall be the duty of the department of community planning and development to serve notice on the owner or owners to cause such grass, weeds, other foreign growth to be cut and/or removed from the premises within ten (10) calendar days after notification. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94; Ord. No. O-00-163, 8-8-00)

**Sec. 26-28.5. Service of notice—generally.**

All notices to comply with the provisions of this article shall be served either by personal service, publication, posting or by certified mail and such procedures shall be deemed the equivalent of personal service. If the owner or owners of any unoccupied lot or premises is not a resident of the city and does not have an agent in the city upon whom notice can be served, notice may be given by sending the same by certified mail to the last-known address of the nonresident owner. The last-known address of the owner shall be that shown on the current real estate tax assessment books or current real estate tax assessment records. Nonresident owners shall also have ten (10) calendar days to comply with said directive. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94; Ord. No. O-00-163, 8-8-00)

**Sec. 26-28.6. Enforcement.**

(a) Citizens may contact the department of community planning and development, which shall be responsible for enforcing the provisions of this article. The director of the department of community planning and development shall have the authority to delegate duties and powers to other appropriate agencies and individuals to assist the department of community planning and development in the enforcement of this article. Whenever the words “director of community planning and development” are used in this article, they shall include all the agencies or individuals to which the director of community planning and development delegates enforcement powers, except where the contexts clearly indicates a different meaning.

(b) The department of community planning and development shall have the authority, whenever deemed appropriate, to have such weeds on property or on such portions of the property as deemed appropriate cut and/or removed and to restrict their future growth by the city's agents or employees, in which event, the costs and expenses thereof, shall be chargeable to and paid by the owner or owners of such property and may be collected by the city in the same manner as taxes and levies are collected and all unpaid costs and expenses shall constitute a lien against such property.

Any owner may avoid any liability to the city provided abatement is completed prior to the initiation of the abatement process by the city's designated agent. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94)

**Sec. 26-28.7. Application for removal of weeds.**

(a) Whenever any person believes that the provisions of this article are being violated, such person can make written application to the department of community planning and development and the department shall examine the condition of the property described in such application. If the department of community planning and development determines that the provisions of this article are being violated, the owner/occupant of the offending property shall be given notice as provided in section 26-28.5 of this article and shall be requested to remove the weeds from the property within ten (10) calendar days of the delivery or mailing of the notice.

(b) If the owner of the property cannot be found within the city after a reasonable search, notice shall be sent by registered mail, return receipt requested, to the last known address of the owner as provided in section 26-28.5 of this article and a copy of the notice shall be posted on the property in a conspicuous place and such procedures shall be deemed the equivalent of personal service.

(c) If the owner/occupant of the property does not cut the weeds within ten (10) calendar days of the delivery or mailing of the notice or within ten (10) calendar days of the posting of the notice, whichever period is greater, the department of community planning and development shall declare the property to be "neglected property," and such designation shall remain in full force and effect until the owner gives the department of community planning and development adequate assurances that the property will be properly maintained in regard to weeds in the future.

(d) Once the department of community planning and development designates a parcel of property to be "neglected property," the person or organization that made application to the department shall be authorized to go onto the property as an agent of the city at the applicant's sole cost and expense to cut, remove and restrict the future growth of the offending weeds. The applicant shall be responsible for taking all precautions necessary to cut, remove and restrict the growth of offending weeds in a safe and proper manner. Chain saws shall not be used unless specifically authorized by the department of community planning and development.

(e) Neither the city, or its employees and officials shall be liable for any damages or injuries caused by cutting, removing or restricting the future growth of weeds from a "neglected property" and shall not be liable for any damages, injuries or expenses incurred by any applicant or any other person in cutting, removing or restricting the future growth of weeds.

(f) The provisions of this article shall not authorize an applicant to enter onto property to remove trees or shrubbery unless the branches, limbs, or other parts of the trees or shrubbery extend or protrude onto private property in a manner which constitutes a danger to citizens or property or where the limbs or branches are likely to fall in such a manner as to endanger private citizens or property. If the department of community planning and development determines that the trees or shrubbery constitute a danger to private citizens or property, the applicant may be authorized to cut and remove such trees and shrubbery that have been designated for removal by the department of community planning and development in accordance with the provisions of this article. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94; Ord. No. O-00-163, 8-8-00)

**Sec. 26-28.8. Penalty for violation of this article.**

Violations of any provision of this article shall be punishable as follows:

(a) For a first offense within one (1) year, a class 4 misdemeanor.

(b) For a second offense within one (1) year, a class 3 misdemeanor.

(c) For a third offense within one (1) year, a class 2 misdemeanor. (Ord. No. O-94-113, 5-24-94, eff. 6-1-94)

**Secs. 26-29—26-40. Reserved.**

### ARTICLE III. NOISE CONTROL

**Editor's note**—Secs. 26-41—26-45. Repealed. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91. Ord. No. O-91-227 added Secs. 26-41—26-45 back into City Code until noise meters were obtained for police department. Ord. No. O-92-001, 1-14-92 repealed sections 26-41 through 26-45.)

#### **Secs. 26-46—26-50. Reserved.**

#### **Sec. 26-51. Declaration of findings and policy.**

The city council hereby finds and declares that at certain levels, noise can be detrimental to the health, welfare, safety and quality of life of the inhabitants of the city, and it is in the public interest that noise should be restricted. It is, therefore, the policy of the city to reduce noise in the community and to prohibit unnecessary, excessive and annoying noises from all sources subject to its police power. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

#### **Sec. 26-52. Definitions.**

The following terms, when used in this article, shall have the meanings hereinafter ascribed to them, unless otherwise clearly indicated by the context:

(a) A-weighted sound level. The sound pressure level in decibels as measured on a type II sound level meter as specified in the American National Standards Institute for sound level meters (S1.4-1983 or a later revision thereof) using the A-weighting network. The sound level so read is designated dB(A).

(b) Business commercial area. As defined in the Zoning Ordinance of the City of Lynchburg, 1979 (hereinafter "Zoning Ordinance").

(c) Decibel (dB). A unit for measuring the volume of sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

(d) Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(e) Emergency work. Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(f) Industrial area. As defined by the Zoning Ordinance.

(g) Motor vehicle. Every vehicle defined as a motor vehicle by Section 46.2-100, of the Code of Virginia, 1950, as amended.

(h) Noise. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse effect on humans.

(i) Noise disturbance. Any sound which (i) endangers or injures the safety or health of humans or animals; or (ii) annoys or disturbs a reasonable person of normal sensitivities; or (iii) endangers or injures personal or real property.

(j) Person. Means any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successors, representative, agent or agency thereof.

(k) Property boundary. An imaginary line along the ground surface and its vertical extension, which separates the real property owned, leased or otherwise controlled by one person from that owned, leased or otherwise controlled by another person, but not including intra-building real property divisions.

(l) Residential area. As defined in the Zoning Ordinance.

(m) Sound. An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(n) Sound level. The weighted sound pressure level obtained by the use of a type II sound level meter as specified in the American National Standards Institute specifications for sound level meters (S1.4-1983 or a later revision thereof).

(o) Sound level meter. A type II sound level meter as specified in the American National Standards Institute specifications (S1.4-1983 or later revision thereof) and used to measure sound pressure levels. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

**Sec. 26-53. Administration and enforcement.**

The noise control program established by this article shall be enforced and administered by the police department. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

**Sec. 26-54. Testing of metering devices.**

In order to implement and enforce this article effectively, the chief of police shall within a reasonable time after the effective date of this article, develop and promulgate standards and procedures for testing and validating sound level meters used in enforcement of this article. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

**Sec. 26-55. Prohibited noise, generally.**

(a) Prohibited noise. No person shall create or cause the creation of any noise so as to disturb or disrupt the peace and quiet of reasonable persons in the City of Lynchburg.

(b) Maximum sound pressure levels. No person shall operate or permit to be operated any noise source which generates a sound pressure level exceeding the limits set forth in the table entitled "Maximum Sound Pressure Levels" when measured at or outside the property boundary of the noise source or at any point within any other property affected by the noise. When a noise source can be identified and its noise measured in more than one (1) district classification, the limits of the most restrictive classification shall apply.

(c) Noise sensitive zones. No person shall operate or permit to be operated any noise source on any street or on any property adjacent to any school, institution of learning or court, while the same is in session, or adjacent to any building used as a place of public worship while being so used, or adjacent to any hospital which unreasonably interferes with the workings of such school, institution or court or the services being conducted in such place of worship or which disturbs or unduly annoys patients in such hospital.

(d) Enumerated acts. No person shall engage in any of the following acts, among others, which are declared to be loud disturbing and unnecessary noise in violation of this section, but such enumeration shall not be deemed to be exclusive:

(1) Radios, phonographs, etc. No person shall operate or permit the playing of any radio, phonograph, television set, music sound system, tape player, radio receiving set, musical instrument or similar device which produces, reproduces, or amplifies sound or any musical instrument on any public sidewalk or right-of-way or on any other publicly owned property or on any privately owned property in such a manner or with such volume to disturb or annoy the quiet, comfort or repose of reasonable persons. (Prohibitions against excessive noise from radios and music systems in motor vehicles are found in section 26-58 of this article and prohibitions against excessive noise from radios and music systems in the public parks are found in section 28-7(B) of the city code.)

(2) Yelling, shouting, etc. No person on or in any public sidewalk, street or right-of-way or on any other publicly owned property or on any privately owned property shall engage in yelling, shouting, hooting,



whistling or singing in such a manner or with such volume as to disturb or annoy the quiet, comfort or repose of reasonable persons.

(3) Loudspeakers, amplifiers, etc. for advertising. No person shall use or permit the use of any musical instrument, radio, phonograph, sound amplifier or device of any kind whereby sound is cast on any highway, street or across property boundaries for the purpose of advertising or attracting the attention of the public to any performance, show, sale or display or merchandise or to any building or structure between the hours of 9:00 p.m. and 7:00 a.m. The use of such devices shall be permitted at other times provided they are not operated in such a manner or with such volume as to disturb or annoy the quiet, peace or repose of reasonable persons.

(4) Shouting and crying of peddlers, etc. The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood is prohibited.

(5) Animals. No person shall keep or permit the keeping of any animal which, by causing frequent or long-continued noise, shall disturb the quiet, comfort or repose of the neighborhood to such an extent as to constitute a nuisance. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91; Ord. No. O-92-001, 1-14-92)

**Sec. 26- 56. Maximum sound pressure levels.**

Table: Maximum Sound Pressure Levels

Receiving Land Use Category	Sound Level Limit db(A)	
	7:00 a.m.	10:00 p.m.
	-10:00 p.m.	-7:00 a.m.
Noise sensitive zone	55	50
Residential	57	52
Park and recreational	67	62
Business (commercial)	67	62
Industrial	77	77

Measurements in multi-family structures. In a structure used as a multi-family dwelling the police department may take measurements to determine such sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows in the normal position for the season. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91; Ord. No. O-92-001, 1-14-92)

**Sec. 26- 57. Exemptions.**

The following specific activities are exempt from the provisions of Sections 26-55 and 26-56 herein:

(a) Sound created by the operation of domestic power tools such as power lawn mowers, chain saws, weed eaters, etc. provided the operation of said equipment is limited between the hours of 7:00 o'clock a.m. and 9:00 o'clock p.m. and such equipment is operated with a standard muffler or sound dissipating devices.

(b) Sound generated by the construction, repair, maintenance, remodeling, demolition, alteration, grading or other improvement of real property, streets, sewers or utility lines, provided such sound is limited between the hours of 7:00 o'clock a.m. and 9:00 o'clock p.m..

(c) Sound generated by the operation of any governmental function.

(d) Radios, sirens, horns and bells on police, fire or other emergency response vehicles.

(e) Parades, fireworks or other special events or activities for which a permit has been issued by the city, within such hours as may be imposed as a condition for the issuance of the permit.

(f) Religious services, religious events or religious activities, including, but not limited to music, bells, chimes and organs which are a part of such religious activity.

(g) Sound amplifying equipment used at public parks or recreation fields provided the operation of such equipment has been approved by the department of parks and recreation.

(h) Non-commercial public speaking and public assembly activities conducted on any public right-of-way or public property for which a permit has been issued by the city, within such conditions as may be imposed as a condition for the issuance of the permit.

(i) Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools, provided that such activities have been authorized by school officials.

(j) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.

(k) Sound generated for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.

(l) Activities for which the regulation of noise has been preempted by federal law.

(m) Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.

(n) The movement of aircraft or trains which is conducted in accordance with or pursuant to applicable federal laws and regulations. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

#### **Sec. 26-58. Prohibited noise from motor vehicles.**

No person within the city limits shall:

(a) Operate or permit the use or operation of any radio receiving set or any tape player or any other device which produces, reproduces or amplifies sound in a motor vehicle in such a manner that the sound can be heard more than twenty-five (25) feet from the motor vehicle.

(b) Sound or permit the sounding of any horn, whistle or other device on or in any vehicle, except as a warning of danger.

Prohibitions against other unnecessary noises in the operation of motor vehicles are found in section 25-16 of the city code. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

#### **Sec. 26-59. Penalties and violations.**

(a) Any person who violates any provision of this article shall be guilty of a class 3 misdemeanor. Any person who commits a second or subsequent violation of this article within a twelve (12) month period shall be guilty of a class 2 misdemeanor.

(b) Each violation of any provision of this article shall constitute a separate offense, whether committed on the same or subsequent days.

(c) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant or resident physically present on the property where the violation is occurring is rebuttably presumed to be guilty of the violation. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

**Sec. 26-60. Severability.**

It is the intent of the city council that this article shall be construed to secure for the citizens of the city the freedom from any noise disturbance as described herein without violating any of the rights secured by the Constitution to the people. In the event that any provision hereof should ever be determined invalid for any reason, it is the intent of the city council that the remaining provisions continue in effect to the extent that they can be enforced notwithstanding such determination, and, therefore, this article is declared severable. (Ord. No. O-91-170, 7-9-91, eff. 9-1-91.)

**Secs. 26-61—26-70. Reserved.**

**ARTICLE IV. GRAFFITI CONTROL**

**Sec. 26-71. Definition.**

Graffiti shall mean the unauthorized application by any means of any writing, painting, drawing, etching, scratching or marking of an inscription, word, figure, or design of any type on any public or private building or other real estate or personal property owned, operated or maintained by a governmental entity or agency or instrumentality thereof or by any private person, firm, or corporation. (Ord. No. O-96-065, 3-26-96)

**Sec. 26-72. Graffiti prohibited; criminal penalty.**

(a) It shall be unlawful for any person to deface or damage private or public property, by or through the application of graffiti.

(b) Any person violating any provision of this section shall be guilty of a class 1 misdemeanor. (Ord. No. O-96-065, 3-26-96)

**Sec. 26-73. Parental responsibility for damage to property.**

In the event graffiti is applied to any public property by a minor who is living with either or both parents, the city may institute an action and recover from the parents of the minor, or either of them, the costs for damages suffered by reason of the willful destruction of, or damage to, public property by the minor. The action by the city shall be subject to any limitation on the amount of recovery set forth in Section 8.01-43 of the Code of Virginia or other applicable state law. Any recovery action brought by an owner for damages by reason of graffiti to private property shall be subject to the limitation set forth in Section 8.01-44 of the Code of Virginia. (Ord. No. O-96-065, 3-26-96)

**Sec. 26-74. Authority for city to remove or repair the defacement of buildings, walls, fences and other structures.**

(a) The city manager or a designated representative is authorized to undertake or contract for the removal or repair of the defacement, by or through the application of graffiti, on any public buildings, wall, fence or other structure or any private building, wall, fence or other structure where such graffiti is visible from any public right-of-way.

(b) Prior to such removal, the city manager or a designated representative shall seek the written permission of the property owner or whenever possible oral permission. If the property owner fails to provide requested permission within ten days of receipt of permission request or denies the oral request, the abatement procedures set forth in §26-4 through §26-8 of this chapter shall be followed to effect removal or repair of the defacement.

(c) After receiving written permission, oral permission or giving proper notice, the city may undertake the removal or repair of the defacement. Except for those costs recovered pursuant to Section 26-73 this article the removal or repair of graffiti shall be at the expense of the city; provided, however, the removal or repair work may be undertaken by volunteers, individuals required to perform community services by order of any court or inmate labor, under appropriate city supervision. (Ord. No. O-96-065, 3-26-96)